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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Application of Open Network)
Architecture and Nondiscrimination)
Safeguards to GTE Corporation)

CC Docket No. 92-256

COMMENTS OF THE STATE OF HAWAII

Of Counsel:
Herbert E. Marks, Esq.
Jody D. Newman, Esq.
SQUIRE, SANDERS & DEMPSEY
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
(202) 626-6600

Charles W. Tutto
Executive Director
Division of Consumer
Advocacy
STATE OF HAWAII
P.O. Box 541
Honolulu, HI 96809
(808) 586-2770

Patricia J. Lum, Ph.D.
Consultant
5616 Bloomfield Drive, T-2
Alexandria, VA 22312

February 22, 1993

No. of Copies rec'd 019
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COMMENTS OF THE STATE OF HAWAII

The State of Hawaii ("State" or "Hawaii")¹ submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.²

I. INTRODUCTION

The State of Hawaii supports the application of Open Network Architecture ("ONA") and other nondiscrimination safeguards to GTE Corporation. Such policies will benefit unaffiliated end users and enhanced service providers operating in GTE service areas by increasing their choices and providing a more competitive marketplace. The Commission's proposal therefore clearly serves the public interest.

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1. These Comments are filed by the State of Hawaii, acting through its Governor and the State's Department of Commerce and Consumer Affairs.
 2. Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, 7 FCC Rcd 8664 (1992) [hereinafter "NPRM"].

The State has addressed the importance of applying competitive safeguards to GTE at some length in prior Commission proceedings.³ The State has also conducted extensive analysis supporting the imposition of such requirements on GTE.⁴ As the State has pointed out in its analysis -- and as the Commission has recognized -- GTE Corporation is equivalent in size and financial strength to any Regional Bell Holding Company ("RBHC") for all relevant purposes.⁵ Moreover, GTE Operating Companies ("GTOCs") enjoy the same monopoly control over the local exchange as do the Bell Operating Companies ("BOCs").

The State therefore maintains that there is no reason to exempt GTE from any of the safeguards currently imposed on the RBHCs. GTE's pre-NPRM submission ("GTE Letter") fails to provide any justification for the exceptions that it seeks from the Commission.⁶

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3. See, e.g., Comments and Reply Comments of the State of Hawaii, CC Docket 90-623 (filed March 8, 1991 and April 8, 1991, respectively) (Appendix A to these comments).
 4. See P. Lum, Comparison of GTE, GTE Hawaiian, RBHC's & BOCs, Report to the Director of the Department of Commerce and Consumer Affairs, State of Hawaii (Sept. 1991) [hereinafter "Hawaii Report"] (Appendix B to these comments).
 5. See generally id. See also NPRM, 7 FCC Rcd at 8667 (¶ 8).
 6. See Letter from Carol L. Bjelland, Director-Regulatory Matters, GTE, to Pat Donovan and John Morabito, Policy and Program Planning Division, Common Carrier Bureau, FCC (August 28, 1992) [hereinafter "GTE Letter"].

The State of Hawaii is keenly interested in these issues because GTE Hawaiian Telephone Company, Inc. is the only provider of local telephone access to subscribers in the entire State. GTE Hawaiian is also the monopoly provider of intrastate interexchange services and is considered a dominant provider of international message telecommunications services ("IMTS"). Accordingly, if the Commission declines to impose all competitive safeguards on all GTE Operating Companies ("GTOCs"), as proposed, then it should at least apply all such safeguards to GTE Hawaiian.

Because the State has sufficiently demonstrated that GTE (or, in the alternative, GTE Hawaiian) should be subject to the same ONA requirements and nondiscrimination safeguards that are applicable to the BOCs,⁷ the State will not repeat the record in these comments. Rather, the following comments set forth a number of particular matters that the State believes are necessary to address.

II. GTE IS CAPABLE OF COMPLYING WITH ALL SAFEGUARDS WITHOUT FINANCIAL HARM OR UNDUE BURDEN

As the State has previously demonstrated, GTE is financially capable of complying with ONA and other non-discrimination safeguards.⁸ The Commission has pointed out

7. See generally Comments and Reply Comments of State of Hawaii (Appendix A to these comments); Hawaii Report (Appendix B to these comments); State of Hawaii Ex Parte Presentation, CC Docket No. 90-623 (November 8, 1991) (hereinafter "Hawaii Ex Parte") (Appendix C to these comments).

8. See Hawaii Report at 20.

that GTE is "by many measures" larger than some of the RBHCs.⁹ And, GTE's own estimate that its first-year expenses will be approximately \$20 million appears to be very reasonable on a company-wide basis.¹⁰

According to the GTE Letter, many of the necessary procedures for filing documentation associated with the implementation of safeguards are already in place.¹¹ Thus, there should be little additional burden in filing this information with the Commission.

As an additional matter, the State is concerned that GTE's expense calculations discriminate against subscribers in Hawaii. According to GTE, \$6 million of its estimated \$20 million first-year expenses associated with implementing nondiscrimination safeguards are attributed to the State of Hawaii alone.¹² GTE therefore attributes 30% of its total first-year expenses to subscribers in Hawaii, which represent a mere 3.8% of its total subscriber base.¹³

9. NPRM, 7 FCC Rcd at 8667 (¶ 8).

10. See GTE Letter at 2 n.2. In more than 100 pages of letter attachments, GTE fails to provide the Commission with any analysis supporting actual total increased costs associated with implementing these safeguards. Indeed, GTE ignores the fact that the implementation of safeguards provides an opportunity for the Company to realize increased revenues from additional business access.

11. See id. at Attachment G.

12. See id. at 2 n.2.

13. Percentage of access lines derived from FCC, Statistics of Communication Common Carriers (1990-91).

If so, this conclusion would be inconsistent with GTE's implied density-cost relationship.¹⁴ The proportion of GTE's first-year expenses attributed to Hawaii, therefore, appears to be unreasonable. These calculations suggest that GTE is already seeking to discriminate against end users and unaffiliated enhanced service providers in a market in which GTE is the sole provider of local exchange access and in which it enjoys virtually unlimited market power.

III. GTE'S ARGUMENTS WITH RESPECT TO THE "RURAL" NATURE OF ITS EXCHANGE OPERATIONS HAVE NO MERIT

As the State has noted in prior proceedings, GTE's average overall line density is higher than that of U S West.¹⁵ Yet, U S West is subject to all of the Commission's competitive safeguards. In addition, GTE recently announced plans to trade or sell the exchanges in three of the low-density states it currently serves.¹⁶ If such transactions

14. GTE claims that to implement safeguards in Hawaii will cost approximately \$10.63 per access line as compared to an average of \$0.97 per access line for other GTOC exchanges. This figure is derived in the following manner: (1) subtracting the lines served in Hawaii (564,262) from the total GTE access lines (15,017,257) to yield 14,452,995 non-Hawaiian lines; (2) dividing the \$6 million that GTE attributes to Hawaii by Hawaiian access lines; and (3) dividing the residual \$14 million attributed to the balance of GTE access lines by the residual access lines.

15. See Hawaii Ex Parte at A-2 (Appendix C to these comments). See also Hawaii Report at 6 (Appendix B to these comments) (showing line density by operating company).

16. See generally GTE News, "GTE Offers Kansas, North Dakota, and South Dakota Exchanges for Possible Trade or Sale" (Jan. 6, 1993).

take place, GTE's overall line density will increase slightly.¹⁷ This effort would suggest that GTE may become less "rural" and therefore would counter GTE's request for special treatment as a "rural" carrier.

In addition to overall density, GTE sites its low presence in urban markets. This argument is not valid for two reasons. First, the argument is based on 1980 Metropolitan Statistical Areas ("MSAs"). The 1990 census shows dramatic changes in the top 50 MSAs, where GTE's presence has become far more substantial. Furthermore, because cities such as Burlington, Vermont were on initial rollouts for Comparably Efficient Interconnection requirements imposed on the BOCs, it would appear that criteria other than urban size are relevant and important for GTE as well.

The State also notes that, according to the 1990 census, Honolulu is the 51st largest MSA in the country (a very "urban" exchange area by any measure) and is served solely by GTE. In addition, the State of Hawaii has a service-oriented economy, which encourages the high-intensity use of telecommunications services.

17. GTE's divestment of 20,600 access lines and 4,900 square miles in three rural states would have the net effect of increasing GTE's overall line density by approximately 0.6 lines per square mile.

IV. NETWORK DISCLOSURE AND NONDISCRIMINATION SAFEGUARDS
ARE AS IMPORTANT FOR GTE AS THEY ARE FOR THE RBHCS

A. GTE Exchanges Served by GTE Manufactured
Equipment Necessitate Make/Buy Decisions.

GTE argues that it rarely engages in make/buy decisions and therefore should not be subject to this aspect of network disclosure. The State disagrees. Although GTE no longer has an exclusive manufacturing affiliate, it remains involved in a joint switch-manufacturing operation with AT&T. In addition, many GTOC's currently utilize equipment originally manufactured by GTE's Automatic Electric.

For example, 38 of the more than 80 wire centers in Hawaii employ GTD5 switches.¹⁸ In fact, 87 percent of all switching equipment purchased by GTE operating companies through 1985 was purchased from GTE's switch manufacturing affiliate.¹⁹ Despite GTE's claims, the development of new functionalities and interfaces for such equipment necessitates GTE make/buy decisions on a regular basis.

Moreover, GTE argues that development of the switching equipment capabilities is determined by Bell Company specifications to switch manufacturers.²⁰ Yet, no BOC

18. Hawaii Public Utilities Commission, Docket No. 6404 (1989) (list of switching equipment provided by GTE Hawaiian to State of Hawaii Division of Consumer Advocacy in conjunction with touch tone service).

19. See P. Huber, The Geodesic Network: 1987 Report on Competition in the Telephone Industry, Table CO.6. at 14.9 and n.43.

20. See GTE Letter at 11.

utilizes GTE equipment, and GTE equipment cannot accommodate BOC software. The specifications for GTE equipment were -- and, for some time, will continue to be -- determined solely by GTE. For these reasons, GTE cannot legitimately claim that they do not participate in make/buy decisions.

B. Nondiscrimination Reporting By GTE Will
Protect Unaffiliated Enhanced Service
Providers.

GTE makes two points with regard to complying with nondiscrimination reporting requirements. First, GTE states that its internal procedures preclude discrimination, and notes that only one instance of a complaint has been provided to the FCC by the State of Hawaii.²¹ This comment is meaningless because without nondiscrimination reporting, it is virtually impossible to know whether discrimination has or has not occurred. Second, GTE claims that filing non-discrimination reports would be burdensome. The State believes, however, that because GTE already creates a paper trail by its own implication, filing this information with the Commission will not impose any significant burden.

V. GTE SHOULD BE SUBJECT TO ALL CPNI RULES

The Customer Proprietary Network Information ("CPNI") rules now in place require, for customers with more than 20 lines, the BOCs to procure a customer's written

21. See id. at Attachment G.

permission prior to sharing information about that customer with affiliated non-regulated service operations.

In order to access such information from customer accounts, a password identification is required. GTE claims that it "flags" accounts upon being notified by the customer, in writing, that CPNI is not to be shared.²² This approach is unsatisfactory for two reasons. First, GTE is not required to notify customers of their right to withhold such information. Second, access to those accounts that are restricted is still available to GTE-affiliated enhanced service provider personnel because GTE does not have a password identification system in place. This provides GTE affiliates with an unfair competitive advantage.

In addition, while the BOCs are routinely required to share aggregated CPNI reports with unaffiliated enhanced service providers, GTE is not. Although GTE argues that it does not use this information for marketing, its promises do not provide a sufficient safeguard against anticompetitive conduct. Without a rule requiring sharing, GTE may -- at any time, and without penalty -- decide to use the information to its advantage. To the extent that GTOCs do aggregate the information and it is available to affiliated enhanced service operations, the information should be shared with unaffiliated providers.

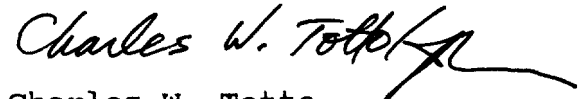
22. See id.

VI. CONCLUSION

For the reasons stated above, the State of Hawaii respectfully requests the Commission to apply the same competitive safeguards to GTE Corporation that it applies to the BOCs. If the Commission declines to do so, then it should at least apply all such safeguards to GTE Hawaiian Telephone Company, Inc.

Respectfully submitted,

THE STATE OF HAWAII



Charles W. Tutto
Executive Director
Division of Consumer
Advocacy

P.O. Box 541
Honolulu, HI 96809
(808) 586-2770

Patricia J. Lum, Ph.D.
Consultant
5616 Bloomfield Dr., T-2
Alexandria, VA 22312

Of Counsel:
Herbert E. Marks, Esq.
Jody D. Newman, Esq.
SQUIRE, SANDERS & DEMPSEY
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20004
(202) 626-6600

February 22, 1993

CERTIFICATE OF SERVICE

I, Dana M. Pass, hereby certify that copies of the foregoing Comments of the State of Hawaii were served by hand upon the following parties this 22nd day of February 1993.

Honorable James H. Quello
Chairman
Federal Communications
Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554


Honorable Ervin S. Duggan
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Honorable Sherrie P. Marshall
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Policy and Program Planning
Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Honorable Andrew C. Barrett
Commissioner
Federal Communications
Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

ITS
c/o Federal Communications
Commission
1919 M Street, N.W.
Room 246
Washington, D.C. 20554



Dana M. Pass

STATE OF HAWAII COMMENTS

APPENDIX A

(CC Docket No. 92-256)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Computer III Remand Proceedings:)
Bell Operating Company Safeguards;)
and Tier 1 Local Exchange Company)
Safeguards)

CC Docket No. 90-623

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Federal Communications Commission
Office of the Secretary

COMMENTS OF THE STATE OF HAWAII

Herbert E. Marks, Esq.
Jody D. Newman, Esq.
SQUIRE, SANDERS & DEMPSEY
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20004
(202) 626-6600

Attorneys for the State
of Hawaii

March 8, 1991

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In the Matter of)
)
Computer III Remand Proceedings:) CC Docket No. 90-623
Bell Operating Company Safeguards;)
and Tier 1 Local Exchange Company)
Safeguards)

The State of Hawaii ("State" or "Hawaii"), by its attorneys,¹ submits these comments in response to the above-captioned Notice of Proposed Rulemaking and Order ("Notice"), which the Commission issued on December 17, 1990.²

The State of Hawaii is pleased to have the opportunity to participate in the Commission's re-examination of the current regulatory regime for the provision of enhanced services. In the Notice, the Commission tentatively has decided to eliminate structural separation requirements and

1. These comments are filed by the State of Hawaii, acting through its Governor and the State's Department of Commerce and Consumer Affairs.
2. Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, FCC 90-416 (released Dec. 17, 1990) [hereinafter "Notice"].

to replace them with a "strengthened set of non-structural safeguards" to protect against anticompetitive conduct in the enhanced services marketplace.³ The Commission, however, proposes to apply certain of these non-structural safeguards only to the Bell Operating Companies ("BOCs"), and not to other local exchange carriers.⁴

The Commission's proposed approach is not in the best interests of the public and will not achieve the Commission's objective to "best encourage the broad-based delivery of enhanced services to the American consumer."⁵ The Commission's approach will result in penalizing certain locales. Although the Commission proposes to apply cost accounting rules to all Tier 1 local exchange carriers, this requirement alone is inadequate if the objective of broad-based delivery of competitively provided enhanced services is to be realized. The State therefore submits that whatever the Commission determines regarding the imposition of competitive safeguards -- whether they be structural, non-structural, or some combination of both -- all competitive safeguards that apply to the BOCs, particularly requirements for Open Network Architecture ("ONA"), also should apply to

3. See id. at 3 (¶ 3).

4. See id.

5. Id. at 3 (¶ 2).

GTE Corporation, or, in the alternative, to GTE Hawaiian Telephone Company, Inc. ("GTE Hawaiian").

The State also urges the Commission to revise its current cost accounting rules now, in order to provide for more detailed carrier information regarding affiliate transactions. Only in this way will regulators have sufficient information to protect ratepayers from unreasonable carrier procurement of facilities and services.

Finally, Hawaii still believes that structural separation requirements are the most effective means of eliminating cross-subsidization and discrimination in the enhanced services market.

II. GTE CORPORATION, OR IN THE ALTERNATIVE
GTE HAWAIIAN, SHOULD BE SUBJECT TO ALL
COMPETITIVE SAFEGUARDS THAT THE COMMISSION
APPLIES TO THE BOCs.

In proposing to replace structural safeguards with non-structural requirements, the Commission has too narrowly focused its approach on the BOCs. In doing so, the Commission has overlooked the prominent posture of GTE Corporation and the effect on the enhanced services market. Although the Commission has proposed to impose certain accounting and cost allocation rules on all Tier 1 carriers (which would include GTE),⁶ this requirement is, by itself,

6. See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1300 (¶ 4), 1304-05 (¶¶ 47-49) (1987).

insufficient to protect against improper cross-subsidization and discriminatory conduct. In order to adequately protect consumers, the Commission must therefore apply to GTE Corporation or to GTE Hawaiian all safeguards that are applied to the BOCs.

A. The Market Status of GTE Corporation and GTE Hawaiian

1. GTE Corporation

The Court of Appeals decision that catalyzed this remand proceeding emphasized the importance of recognizing the market status of GTE Corporation in the context of establishing competitive safeguards.⁷ Indeed, the Court based the remand in part upon the Commission's failure to properly account for its decisions regarding the application or non-application of competitive safeguards to GTE Corporation.⁸ Thus, the Commission should revisit its determinations regarding the application of safeguards to GTE.

This is also appropriate in light of the recently approved GTE/Contel merger,⁹ which GTE concedes will create

7. See, e.g., California v. FCC, 905 F.2d 1217, 1225 n.10, 1236 & n.25, 1237 (9th Cir. 1990).

8. See id. at 1237 ("The FCC's classification of GTE has been at best inconsistent and at worst totally random as has been its comparison of GTE to the individual BOCs.")

9. See Contel Corp., et al., File No. ENF-90-11, FCC 91-49 (released Feb. 15, 1991).

the largest U.S.-based local exchange telephone company in the United States.¹⁰ By any measure, GTE will be an enormous telephone holding company system. The combined GTE/Contel operations reportedly will control more than 17.7 million access lines throughout the United States.¹¹ By contrast, Bell Atlantic controls the largest number of BOC access lines at 17 million.¹² Moreover, GTE alone generated revenues of \$17.42 billion in 1989, while Contel had \$3.11 billion.¹³ If non-telephone operations are excluded, the aggregate GTE/Contel revenues are approximately \$15 billion. By contrast, BellSouth, the largest BOC, registered revenues of \$14.2 billion.¹⁴ Projections for the merged company expect that GTE will generate total revenues of \$21.8 billion.¹⁵

-
10. See GTE Corporation Shareholder News, Second Quarter Report 4 (1990) [hereinafter "GTE"].
 11. See FCC Statistics of Communications Common Carriers 3 (1989/90) [hereinafter "FCC"]. Cf. GTE at 4-5. (GTE states that the company will control 20.6 million access lines.)
 12. See FCC at 3.
 13. See Proposed GTE, Contel Merger Would Create Largest Telco, FCC Week, July 16, 1990, at 1-2 [hereinafter "FCC Week"].
 14. See id. Cf. FCC at 3 (\$13.99 billion).
 15. See id. Similarly, the GTE/Contel 1990 network expansion budgets, at \$2.23 billion, exceeds all BOC budgets except that of BellSouth (\$2.97 billion). See Wilson & Inan, LECs Flatten Spending, Feast on Fiber, (Footnote 15 continued on next page)

Furthermore, GTE Corporation's operations are centralized. Indeed, it allocates certain functions to specific operating companies that provide those functions for the entire group of operating companies. Thus the resources of the holding company system affect all of its operations and its aggregate resources are certainly relevant.

When determining whether or not to apply structural safeguards to the BOCs, the Commission declined to apply similar requirements to GTE.¹⁶ In distinguishing GTE from the BOCs, the Commission emphasized in part that the costs of "disentanglement" would be too burdensome on the independents and that GTE's bottleneck facilities were in mostly rural areas.¹⁷ Such distinctions, however, do not warrant the Commission's decision to exclude GTE from the same safeguards that are applied to the BOCs. Disentanglement, for example, would not be at issue in this proceeding if the Commission determines that non-structural safeguards

(Footnote 15 continued from previous page)

Telephony, Dec. 17, 1990, at 38. In addition, the merger will give GTE more than 113,000 telephone company employees. See FCC Week at 2.

16. See Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services, and Cellular Communications Services by the Bell Operating Companies, 95 FCC 2d 1117 (released Dec. 30, 1983).

17. See id. at 1138-39.

are appropriate. Even if it were at issue, there is no demonstration on the record that associated costs are too burdensome for a company the size of GTE. The Commission's distinction between rural and urban services "greatly puzzled" the Court of Appeals for the Seventh Circuit.¹⁸ Indeed, in reviewing the Commission's decision not to apply safeguards to GTE, the Court found that the Commission's distinctions between GTE and the BOCs were "not fully persuasive."¹⁹ Furthermore, the rural/urban distinction, does not apply to GTE Hawaiian, which, as explained below, serves the entire State of Hawaii.

2. GTE Hawaiian

The status of GTE's operations in the State of Hawaii demonstrates why it should be subject to all of the Commission's prescribed safeguards. If the Commission decides to continue to exclude GTE from all safeguards generally, then it should apply them to GTE Hawaiian in any event. GTE Hawaiian, for example, remains the only telephone carrier serving the entire State of Hawaii. GTE Hawaiian also is a local exchange carrier that is authorized

18. See Illinois Bell Tel. Co. v. FCC, 740 F.2d 465, 476 (7th Cir. 1984).

19. See id. Although the Court noted various "holes in the Commission's analysis," it did not determine the Commission's decision was arbitrary. See id. at 476-77.

to provide international services, and it is classed as a dominant carrier with respect to its International Message Telecommunications Service ("IMTS").²⁰ GTE Hawaiian also provides access for all interexchange carriers, including competing international carriers.

Thus, GTE Hawaiian is a dominant carrier throughout the State of Hawaii, and it has market power in all significant local relevant markets. In addition, it is part of one of the largest telephone holding company systems in the nation. For these reasons, there are compelling reasons to subject GTE Hawaiian and its parent, GTE Corporation, to all of the competitive safeguards that the Commission applies to the BOCs. There is no evidence to support the conclusion that these companies should be excluded from safeguards.

B. The Importance of Competitive Safeguards

1. Generally

Competitive safeguards are a result of the Commission's decision to foster a competitive enhanced services market, and to provide for the more efficient use of telephone network. The Commission has remained concerned that

20. See International Competitive Carrier Policies, 102 FCC 2d 812, 832 (¶¶ 47-49) (1986) (GTE Hawaiian has "classic bottleneck" with "ability to exclude meaningful competition through discriminatory practices").

monopoly local exchange carriers are able to gain an unfair competitive advantage in the enhanced services market.

Thus, by adopting meaningful competitive safeguards, the Commission imposes upon local exchange carriers rules that seek to deter two general types of anticompetitive conduct: (1) carrier discrimination in favor of their own enhanced service operations through the provision of network services; and (2) carrier cross-subsidization between regulated basic service and unregulated enhanced service operations. If the Commission's competitive safeguards are not applied effectively, however, its goals of eliminating such anticompetitive conduct in order to develop a strong and innovative information services market will be stunted. The current position of GTE Corporation, and particularly GTE Hawaiian, dictate that all safeguards applied to the BOCs also should apply to these carriers in order to achieve these goals.

2. Open Network Architecture ("ONA")

When the Commission decided to permit the BOCs to offer enhanced services on an integrated, unseparated basis, it imposed a number of non-structural safeguards designed to protect competing enhanced service providers from local exchange carrier discrimination in the provision of access to network services. These safeguards included, among other